IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1459 OF 2006

Manoj Anant Mhatre
and anr. ....Applicants.

V/s

State of Maharashtra ....Respondent.

Mr. A.P. Mundargi with Mr. R.D. Suryawanshi for the applicants.

Ms. S.D. Shinde, APP for the State.

Mr. A.G. Joshi for the original complainant.

CORAM: V.M. KANADE, J.

DATE: 20th April, 2006

P.C.

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. This is an application for anticipatory bail filed by the applicants who are office bearers of the Association which has been formed for the purpose of protecting the interest of local bricks kiln producers. The applicants have an apprehension that they are likely to be arrested in connection with C.R.No.I-22 of 2006 registered with Ganeshpuri Police Station for the offence punishable under sections 395, 436, 384, 325, 323, 504, 506, 427 of the Indian Penal

Code.

3. It must be pointed out here that another complaint was filed against the present applicants by the another complainant for more or less the same offences which are alleged to have been committed. The one of the applicants herein i.e. applicant No.2 made an application for anticipatory bail vide Criminal Application No.1458 of 2006. This Court, however, considering the rivalry between the local brick kiln producers and the outsiders arrived in the area, felt that for the reasons stated in the said criminal application, a case was made out for grant of an anticipatory bail and had accordingly granted anticipatory bail in favour of the applicants in that criminal application and the applicant No.1 in that application is also the applicant No.2 in this criminal application. It appears that a second complaint has been lodged against the present applicants by one Shankar Kalyan Kumbhar in which he has alleged that apart from removing Rs. 25,000/- from his pocket and assaulting him and an amount of Rs 1 lakh was demanded towards the subscription for becoming a member of their association and the hut of one Gulabbai Wagh was set on fire. The complainant was also assaulted and, in that assault, there was a

fracture to the leg of the complainant.

4. The learned Counsel appearing on behalf of the applicants invited my attention to the statement of the complainant in which he has stated that he knew the applicant No.1. Manoj Mhatre and that he instigated other applicants to assault him. He submitted that, in fact, the applicant No.1 - Manoj Mhatre had appeared for SSC Examination which was held at Bhiwandi which was at a considerable distance from the place of the incident. He invited my attention to the application which was filed by the applicant No.1 to the SCC Board, seeking permission to appear for the said examination with the help of a writer since he had a fracture in his hand. He submitted that, therefore, the complaint obviously was concocted, firstly because it was filed after a lapse of 7/8 hours and, secondly, there was no possibility of the applicant No.1 being present at that place. He invited my attention to the medical certificate issued by Soham Hospital in which it was stated that the applicant No.1 had an injury on his hand. The learned Counsel for the applicant submitted that this is a fit case for grant of an anticipatory bail and the facts of this case are identical as the facts in the earlier Criminal Application No.1458 of 2006.

5. It is not possible to accept the submissions made by the learned Counsel for the applicants. In the present case, the allegations which are made in the complaint are of serious nature. It is alleged that apart from removing Rs 25,000/- from the pocket of the complainant, the applicants had set on fire the hut of one Gulabbai Wagh and had further threatened that if the subscription of Rs 1 lakh is not paid, the huts of other agricultural labourers would be set on fire and, apart from that, the complainant had suffered a grievous injury and his leg was fractured in that assault. It appears that the movement which was started for protecting the rights of the members of association, had gone haywire and that during the process of agitation the applicants appeared to have taken the law into their own hands which cannot be permitted.

6. In any case, in view of these facts, this is not a fit case for grant of an anticipatory bail. The defence of alibi which is raised also cannot be considered at this stage. It is difficult to believe that the applicant No.1 who is 39 years old has dexterity and perseverance in appearing for the SCC

examination. This itself creates a doubt regarding the claim made by the applicant No.1. Somehow it is difficult for this Court to rely on the various certificates which are obtained from the said School.

7. Criminal Application is accordingly dismissed.

8. It is clarified that the parameters for granting anticipatory bail and regular bail are different and, therefore, the concerned court before whom the application for regular bail would be filed may not be influenced by the observations made by this Court in this order since they are made for the purpose of deciding the application for anticipatory bail.

9. Application is accordingly disposed of.

V.M. KANADE, J.